BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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APR - 4 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport	))))))	CC Docket No. 94-97, Phase I

OPPOSITION OF TIME WARNER COMMUNICATIONS HOLDINGS, INC.

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April 4, 1995

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Time Warner Communications Holdings, Inc. ("TWComm"), a wholly-owned subsidiary of Time Warner Entertainment Company, L.P., by its attorneys, hereby files its Opposition to the Direct Cases filed in response to the Common Carrier Bureau's Order Designating Issues for Investigation in the above-referenced proceeding.[1]

I. INTRODUCTION AND SUMMARY

Over the past four years, the Commission has endeavored to introduce policies and procedures that would expand the potential for competition in certain aspects of the local exchange marketplace, specifically interstate special access and switched transport services. Despite continued resistance from some of the affected local exchange carriers ("LECs"), the Commission has

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[1] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Order Designating Issues for Investigation, DA 95-374, CC Docket No. 94-97, Phase I (Com. Car. Bur. released February 28, 1995) ("Designation Order").

moved forward with its "expanded interconnection" regime, permitting competitive access providers ("CAPs") and other parties to provide services in competition with the LECs through virtual collocation.

Throughout this proceeding, the LECs have strongly resisted any form of expanded interconnection. In October, 1994, TWComm commented on the virtual collocation tariffs filed by the LECs. To our dismay, the review of the tariffs and support materials revealed a pattern of subtly -- and at times blatantly -- anticompetitive tariff terms and conditions, excessive and unreasonable rate levels, and defective cost support.

Although the LECs have been given more than ample opportunity to correct the deficiencies contained in their tariffs, they have steadfastly refused to do so. In the First Designation Order, the Common Carrier Bureau required LECs to submit rate and cost information regarding overheads for virtual expanded interconnection services ("VEIS") and comparable services.[2] Subsequently, the Commission issued its Tariff Review Plan Order and again directed the LECs "to provide the overhead factors used for each [VEIS] rate element, identify the cost basis for these factors, explain how the factors were derived

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[2] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Order Designating Issues for Investigation, 8 FCC Rcd 6909, 6913, ¶ 22(c)(1) (Com.Car.Bur. 1993) ("First Designation Order").

from that basis, and justify the reasonableness of the factors."[3] In addition, LECs were required to provide, on a service-by-service basis, overhead factors for all point-to-point DS1 and DS3 special access and switched transport services.[4] LECs were also to explain the basis for any difference in overheads: (1) among the various DS1 and DS3 services; and (2) between DS1 and DS3 services on the one hand and VEIS services on the other.[5]

Because the LECs *twice* failed to provide the required information and because the Bureau's review of the record revealed that there were substantial differences between the proposed loadings for VEIS and those currently applied to comparable DS1/DS3 services,[6] the Bureau was forced to release its second Designation Order.[7] Once again, for the third time, the LECs have failed to fully justify their proposed overhead loadings applied to VEIS. As explained more fully below, the LECs apply different overhead loadings to VEIS than they do for comparable DS1/DS3 services. Moreover, the LECs have not shown in their Direct Cases that the wide variations in overhead

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[3] Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5679, 5682 (Com.Car.Bur. 1994).

[4] Id.

[5] Id. at 5682-5683.

[6] Ameritech Operating Companies et al., CC Docket No. 94-97, DA 94-1421 (released December 9, 1994) ("Virtual Collocation Tariff Suspension Order").

[7] See n.1, supra.

loadings are due to actual differences in the overhead costs incurred by the different services.

Because of the carriers continued failure to justify their proposed overhead loadings, the Bureau has no choice but to continue with the interim adjustment. Until such time that the LECs comply with the Bureau's directive, provide the necessary information, and fully justify their proposed overhead loadings, the Commission should not permit VEIS rates to exceed the lowest overhead loadings assigned to the LECs' comparable DS1 and DS3 services.[8] Accordingly, for the reasons described below, the Bureau should take the following actions:

- Find that the LECs have not provided the justification necessary for its proposed VEIS overhead loadings, and that rate adjustment factors ("RAFs") should remain unchanged except as discussed below;

- Modify RAFs to reflect the use of higher annual charge factors ("ACFs") for virtual collocation service element;

- Direct the LECs to remove overhead loadings from nonrecurring charges ("NRCs") or file NRCs for comparable DS1/DS3 services that include overhead loadings similar to those applied to VEIS elements;

- Direct the LECs to make substantial downward adjustments to the unreasonably high riser cable space rates;

- Direct the LECs to comply with the Designation Order and provide the required information within 30 days or show cause why they should not be subject to a fine for failure to comply with the Bureau's order;

- Provide interested parties with the opportunity to file comments within two weeks after receipt of the required cost information;

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[8] See Virtual Collocation Tariff Suspension Order at ¶¶ 21-23.

- Allow interested parties to enter into a protective agreement to obtain any cost data found by the Commission to be proprietary.

II. SEVERAL LOCAL EXCHANGE COMPANIES FAILED TO PROVIDE UNIT INVESTMENT COMPONENTS AND ANNUAL COST FACTORS FOR DS1 AND DS3 VIRTUAL EXPANDED INTERCONNECTION SERVICE AND FOR COMPARABLE DS1 AND DS3 SERVICES, AS REQUIRED BY THE BUREAU.

In the Designation Order, the Common Carrier Bureau asked LECs to provide all of their unit investment components and all of the annual cost factors applied to those components for DS1 and DS3 VEIS as well as for comparable DS1 and DS3 services with the lowest overhead loadings.[9] Many of the LECs, however, have failed to comply with this request, claiming that the information sought by the Commission is confidential or simply unavailable.[10]

TWComm is highly skeptical of these claims, especially the LECs' requests for proprietary treatment. The LECs' exaggerated assertions of the private nature of their submissions threaten to substantially delay the tariff review process, and undermine the significant steps the Commission has made in the last several years to introduce competition into the local exchange marketplace. In the meantime, of course, TWComm and other commenting parties have been denied access to data which is critical to the development of a comprehensive assessment of the reasonableness of the LECs' proposed VEIS charges.

The Bureau should view the proprietary treatment requests by the LECs for what they truly are: thinly veiled attempts to

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9 See Designation Order at ¶ 17(b).

10 See Table 1.

avoid complying with the Designation Order, thereby depriving TWComm and other interested parties of the ability to prepare and submit meaningful comments on the important issues designated by the Bureau for review in this proceeding. TWComm is not surprised, however, by the LECs' failure to provide the required information, since they have adopted similar tactics in addressing FCC information requests in other expanded interconnection proceedings. Accordingly, the Bureau should direct the LECs to comply with the Designation Order and provide the required information.[11]

Southwestern Bell

The most egregious example of noncompliance with the Bureau's Designation Order is Southwestern Bell. It has requested proprietary treatment for *all* of its cost studies.[12] Notably, the breadth of Southwestern Bell's request for confidential treatment goes far beyond that of any other LEC. As a result, commenting parties are denied any opportunity

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[11] TWComm intends to file requests, pursuant to the Freedom of Information Act ("FOIA"), seeking access to the withheld information. 5 U.S.C. § 552. The LECs will no doubt resist such requests, in a further effort to delay or limit public scrutiny of the pricing practices which prompted the Commission to suspend and investigate the LECs' VEIS rates in the first place. TWComm urges the Commission to act expeditiously to ensure that the requested information is made available to TWComm and other interested parties subject to whatever protective conditions may be appropriate under the circumstances. This will allow the Commission to receive the benefit of a complete record and thereby enhance its ability to make a well-informed decision with regard to the reasonableness of the charges under review in this proceeding.

[12] See Southwestern Bell Direct Case, Appendix 2 at 1.

whatsoever to analyze the reasonableness of Southwestern Bell's proposed VEIS rates.

Ameritech

Ameritech sought proprietary treatment for the investment component data for DS1 and DS3 services.[13] Consequently, TWComm cannot compare the investment components attributed to VEIS to those of comparable access services.

Cincinnati Bell

Cincinnati Bell's request for proprietary treatment of a portion of its unit investment and annual cost data also leaves TWComm with an inadequate record upon which to comment. The company's "public version" of this information includes only data for *total* DS1 and DS3 services of average channel mileage. It does not include component-specific data.[14] As a result, TWComm is unable to conduct a component-by-component comparison of Cincinnati Bell's access and expanded interconnection services. Cincinnati Bell should be required to furnish its fully disaggregated, component-specific cost data to interested parties so that the reasonableness of the company's derived VEIS costs and rates can be evaluated.

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[13] See Ameritech Direct Case, Attachments I and II.

[14] For example, Cincinnati Bell indicates that it has assigned the channel mileage costs for these services to the Entrance Function. Cincinnati Bell Direct Case, Appendix A at 1. Because the VEIS Entrance Function does not incur mileage-related costs, no meaningful comparison can be made for this service component.

BellSouth

BellSouth too failed to furnish cost data for its DS3 switched transport local channel service, claiming that it has not been developed.[15] Instead, BellSouth substituted cost data for its DS3 LightGate special access service. Not surprisingly, in making this substitution, BellSouth provided the costs associated with its most expensive option, i.e., LightGate 1, a month-to-month plan, rather than its least expensive option, LightGate 3.[16] Given that the monthly rate on a per-DS3 basis is only $375 for the latter option (LightGate 3), compared to a rate of $2150 for the service selected by BellSouth (LightGate 1), it is highly unlikely that the company chose a comparable service with the lowest overhead loading available to its customers, as the Bureau had required. Consequently, the DS3 comparison data provided by the company is useless and once again frustrates the Bureau and the public's attempts to evaluate the overhead loadings proposed by BellSouth for its virtual collocation services.

GTE

GTE fails to identify its non-dedicated rate elements. The Bureau required carriers to identify rate elements which could be

[15] BellSouth Direct Case, Exhibit 1 at 1.

[16] LightGate 3 service provides for 12 DS3 capacity over a minimum period of 73 to 96 months as opposed to LightGate 1 service, which provides for a single DS3 on a month-to-month basis.

applied to either DS1 or DS3 virtual collocation services.[17] GTE misinterpreted this plainly-worded request and failed to list its non-dedicated rate elements.[18]

United/Central

The data supplied by United/Central is also nonresponsive, and therefore unusable for conducting a meaningful analysis of its virtual collocation overhead loadings. United/Central provided a disaggregation of its comparable DS1/DS3 services investment into virtual collocation TRP functions. To do so, the company indicated that it removed the portion of investment relating to customer premises facilities.[19] However, the resulting TRP-function investment levels appear unreasonably low (which would tend to overstate the actual overhead levels for comparable services).

For example, for United Telephone Southeast (TN and VA), the company reports a total circuit equipment investment for DS1 Channel Termination and Entrance Facility of $1053.94, including customer premises investment. By contrast, in the disaggregated TRP functions, United/Central claims a DS1 Termination Function investment of only $374.27 and *zero* investment for the Entrance Function. Similarly, the total reported circuit equipment investment for DS3 Channel Termination and Entrance Facility of $42,333.22 is converted into a DS3 Channel Termination of

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[17] Designation Order at ¶¶ 20-22.

[18] GTE Direct Case at 5.

[19] United/Central Direct Case at 5.

$18,075.21 and an Entrance Function of $1317.92. The same pattern is also found in the company's reported circuit equipment investments for the Centel-Illinois study area, including zero investment for the DS1 Entrance Function. Absent an explanation of why so little of the investment is located in the central office and, particularly why a DS1 Entrance Function investment is claimed to be zero, United/Central's TRP-function investment values are not credible.

III. THE COMMISSION SHOULD REJECT LEC ARGUMENTS THAT ATTEMPT UNREASONABLY TO LIMIT THE SCOPE OF SERVICES THAT ARE COMPARABLE TO VEIS.

As the foregoing discussion indicates, the LECs failure to make the information described herein publicly available severely limits the ability of TWComm and others to assist the Commission in assessing the reasonableness of the their VEIS rates and charges. Nonetheless, in an effort to provide maximum assistance to the Commission in its review of the subject charges, TWComm has prepared these comments responding to the LECs' Direct Cases based on the limited information made available thus far.

As an initial matter, several of the LECs challenge the validity of the Commission's determination with regard to the use of overhead loadings for other LEC services as "benchmarks" for assessing the reasonableness of the loadings adopted by the LECs in directing their charges for VEIS. This issue, however, has already been appropriately resolved. The Commission has previously set forth the following standard for VEIS overhead loadings: "if a LEC chooses to use nonuniform [overhead loadings], it may not recover a greater share of overheads in charges for expanded interconnection services than it recovers in charges for comparable services, absent justification."[20] Moreover, no LEC has attempted to explain "how the public interest goal of fostering efficient competition in markets for local telecommunications service is advanced if LECs use average overhead loadings for virtual collocation services provided to competitors and below-average loadings for services provided to their own end-users."[21]

BellSouth

BellSouth argues that *any* comparison of VEIS elements to switched transport and special access services is "invalid."[22] But as noted above, this issue is well settled. In the Tariff Review Plan Order, the Common Carrier Bureau determined that DS1 and DS3 VEIS services are comparable to point-to-point DS1 and DS3 services.[23] In the Virtual Collocation Tariff Suspension Order, the Bureau explained why this is so:

> All these services engage the same basic types of equipment in the LECs' central offices. They all require, for example, a central office entrance cable, an equipment bay containing an optical line terminating multiplexer, and a cross-connect. Moreover, this DS1- and DS3-level central office equipment constitutes a

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[20] Virtual Collocation Tariff Suspension Order at ¶ 17.

[21] Designation Order at ¶ 19.

[22] BellSouth Direct Case at 2.

[23] See Tariff Review Plan Order at ¶¶ 12-15.

> substantial, if not predominant, share of the total cost for all these services.[24]

The Commission should reject out of hand BellSouth's attempt to reopen this basic issue.

GTE

In contrast to BellSouth, GTE accepts the Commission's view that DS1 and DS3 services are comparable to VEIS, observing that both types of services involve facilities dedicated to the customer.[25] Despite their comparability, however, GTE argues that its overhead loadings for DS1 and DS3 services may be different and, by implication, lower than those of VEIS.[26] GTE asserts that this difference is caused by the price adjustments required under price cap regulation.[27]

There are several problems with this argument. First, GTE blithely ignores the basic problem with nonuniform overhead loadings. When higher overhead loadings are assigned to VEIS services, CAPs function at a competitive disadvantage. Thus, as the Common Carrier Bureau explained,

> [i]t further appears that the Commission's policy of promoting competitive entry into the local exchange market would be frustrated by the practice of assigning high overheads to the LEC facilities upon which interconnectors rely to provide competitive services

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[24] Virtual Collocation Tariff Suspension Order at ¶ 17.

[25] See GTE Direct Case at 2. Similarly, Cincinnati Bell has accepted that DS1 and DS3 services are comparable to VEIS. See Cincinnati Bell Direct Case, Appendix A at 1.

[26] See GTE Direct Case at 3.

[27] See id.

while assigning low overheads to the very services against which interconnectors are trying to compete.[28]

Second, GTE fails to acknowledge that the focus of this investigation is on the reasonableness of *current* overhead loadings for comparable DS1 and DS3 services.[29] The focus is not, as GTE seems to argue, on the reasonableness of overhead loadings sometime in the past.

Finally, GTE's defense of its variable overhead loadings exhibits the fundamental problem with price caps. That is, price cap regulation, as modified over the years, gives LECs too much flexibility to reduce the overhead attributed to competitive services and, at the same time, raise or keep constant overhead loadings for LEC services upon which their competitors rely on.

Southwestern Bell

Southwestern Bell takes the position that comparison to individual services (or service elements) is misleading, and that comparisons should be limited to the average overhead loading for all rate elements of comparable services.[30] Southwestern Bell is incorrect. As the Commission has already concluded, applying

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[28] Virtual Collocation Tariff Suspension Order at ¶ 22.

[29] See e.g., Virtual Collocation Tariff Suspension Order at ¶ 20 ("The information submitted by the LECs in support of their proposed rates shows substantial differences between the loading factors they propose to apply to their charges for expanded interconnection services and those *currently* applied to comparable services" (emphasis added)).

[30] See Southwestern Bell Direct Case at 4-5.

"[a]n 'average overhead loading' standard would not preclude LECs from employing discriminatory practices."[31]

Ameritech

Finally, Ameritech argues that the scope of services should be restricted to those that are also being offered by CAPs.[32] TWComm disagrees with this position to the extent that Ameritech would exclude services that CAPs do not offer in Ameritech territory, but that are offered elsewhere by CAPs and that would require the use of VEIS elements to provide on a competitive basis.

In sum, with the exception of collocator-designated equipment, VEIS utilizes the same facilities and resources as the LECs' point-to-point DS1 and DS3 services (although not all of the facilities used for DS1/DS3 are required for VEIS, since it is a more limited service arrangement). As the Commission has correctly noted, all of the referenced services require a central office entrance cable, an equipment bay containing an optical line terminating multiplex (OLTM), and a cross connect. This central office equipment represents a substantial portion of the total costs of each service.[33]

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[31] Virtual Collocation Tariff Suspension Order at ¶ 23.

[32] See Ameritech Direct Case at 2.

[33] The best approach to prevent LECs from engaging in anticompetitive price squeezes in their pricing of DS1/DS3 services, including promotions, would be to require the LECs to unbundle the functional elements of DS1, DS3 and virtual collocation services, apply reasonable overhead loadings to those elements that are common to both, and then impute the common elements to the LECs' own competitive DS1 and DS3 services.

IV. PROMOTIONAL SERVICES AND DISCOUNTED OFFERINGS ARE COMPARABLE TO VIRTUAL EXPANDED INTERCONNECTION SERVICE FOR THE PURPOSE OF EVALUATING OVERHEAD LOADINGS APPLICABLE TO VEIS.

In the Designation Order, the Common Carrier Bureau sought comment on whether there are any services comparable to VEIS other than DS1 and DS3 services.[34] In particular, the Bureau sought comment on whether promotional services qualify as comparable services.[35]

TWComm supports the Bureau's continued search for services that are comparable to VEIS for the purposes of evaluating applicable overhead loadings. The Bureau should, however, resist efforts to rehash issues as to the comparability of point-to-point DS1 and DS3 services that it settled in the Tariff Review Plan Order.

Promotional offerings should be considered comparable services because they are another means for LECs to compete with CAP-provided services that are dependant upon bottleneck monopoly VEIS services. Several LECs support this view. GTE, for example, takes the position that promotional services are comparable (although it states that it does not have any tariffed promotional offerings).[36] Ameritech too indicates that promotions may be considered comparable if there are competing CAP services.[37]

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[34] See Designation Order at ¶ 17(a).

[35] See id.

[36] See GTE Direct Case at 2.

[37] See Ameritech Direct Case at 2.

The fact that promotions are temporary in nature is not relevant, since promotions are used to attract customers on a permanent basis. Moreover, as competition develops for certain of the LECs' DS1 and DS3 services in specific markets, the LECs are likely to expand their use of promotional offerings, increasing their impact on a CAPs' ability to compete.

In addition, in those cases where LECs offer volume or term discounts on comparable DS1/DS3 services, the discounted offerings should be included in the scope of comparable services, since CAPs must compete against these services. Several LECs have included data on volume and term discount offerings of DS1/DS3 services in their responses to the Commission's Designation Order.[38]

Certain LECs, however, argue that it is incorrect to compare the discounted offerings to their VEIS services when virtual collocation services are only offered on a month-to-month basis.[39] TWComm disagrees. LECs have the discretion to offer term and/or volume discounts for VEIS services, and some have announced that they plan to do so.[40] If a LEC voluntarily chooses to discriminate against CAPs by not making such offerings available for VEIS, it is only fair that overhead loadings on their month-to-month VEIS be comparable to those applied to their DS1/DS3 discounted offerings. Otherwise a price squeeze would be

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[38] See Cincinnati Bell Direct Case, Exhibit A.

[39] Id. at Appendix A, page 1.

[40] See Bell Atlantic Direct Case at 9.

created that would prevent CAPs from offering their customers competing volume and/or term discounts.

V. SEVERAL LECS HAVE APPLIED UNREASONABLY HIGHER ANNUAL CHARGE FACTORS TO VIRTUAL COLLOCATION ELEMENTS THAN TO COMPARABLE DS1/DS3 SERVICE ELEMENTS.

Despite the limited data supplied in the Direct Cases, several of the LECs have applied higher ACFs to VEIS than to comparable DS1/DS3 service elements. None of the LECs, however, provide any justification or explanation for these differences.

Ameritech

Similar to many of the other LECs, Ameritech's ACFs applied to its comparable DS1 and DS3 services differ from those applied to its virtual collocation services.[41] In many instances, Ameritech's ACFs are higher for VEIS than for its own DS1/DS3 services. For example, except for the DS3 Cross-Connect function, Ameritech applied depreciation factors to virtual collocation components (as defined in the TRP) that were higher than those applied to comparable DS1/DS3 TRP functions.

Moreover, when the charge factors that have been applied to the TRP functions are summed and compared, three out of the five TRP functions have greater charges applied to virtual collocation services than to comparable DS1/DS3 services, while the reported charges for a fourth function appear to be erroneous.[42] While

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[41] See Table 2.

[42] As indicated in Table 2, Ameritech's filing shows Income Tax and Ad Valorum Tax factors of 3.36% and 10.27%, respectively, for the DS3 Cross-Connection function for the comparable DS3 service. These values are substantially higher (continued...)

Ameritech's ACF disparities are less egregious than those of the other LECs, the company fails to demonstrate that its direct costs and rates for VEIS are reasonable.

BellSouth

BellSouth has supplied three tables that show the ACFs assigned to BellSouth's DS1 and DS3 (LightGate month-to-month) services, and its virtual collocation services.[43] However, BellSouth's data contains troubling inconsistencies that require an explanation from the company. First, BellSouth reports that an Administration factor of 0.0369 was applied to its virtual collocation services Land and Buildings investments, but appears to charge no Land and Buildings related administration costs to its own DS1/DS3 services.[44] Second, BellSouth includes an Analog Electronic Equipment cost category for VEIS that was not applied to its comparable DS1/DS3 services. The company has provided no explanation of why this investment category should be applied only to its virtual collocation services.

Third, BellSouth has not adequately explained how its reported ACFs are applied to investments. When BellSouth's ACFs

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[42](...continued) than the tax factors applied to the other functions (e.g., DS1 Cross-Connection values of 2.82% and 0.70%, respectively), and thus appear unreasonable. The substitution of values more in line with those applied to other functions would reduce the total expenses attributed to the DS3 Cross-Connection to a level much more comparable to that indicated in the company's virtual collocation DS3 service.

[43] See BellSouth Direct Case, Exhibits 3A-3C.

[44] Compare id. at Exhibit 3-C with Exhibit 3-A, page 1 (DS1) and 2-9 (DS3).

are computed from the TRP-format data and compared to its reported ACFs in Exhibit 3C, the Land and Building charge factors do not appear to match the ACF tables in Exhibit 3. Moreover, Land and Building related costs appear to be recovered in two distinct and overlapping ways. This problem is illustrated in Table 3-A. As shown therein, BellSouth includes Land and Buildings as investments upon which ACFs such as depreciation, cost of money, income tax, and administration are applied.[45] At the same time, in Exhibit 2 of BellSouth's Direct Case and the TRP workpapers, Land and Buildings are presented as ACFs that are applied to other investments, *including investments for floor space*. Exhibit 2 shows Land and Buildings cost factors of 0.0014 and 0.0197, respectively, applied to all virtual collocation services elements.[46] This appears to be precisely the type of double recovery of costs that TWComm brought to the Commission's attention in its Petition to Reject of Partially Suspend the LECs' VEIS tariffs.[47] Accordingly, a corresponding downward adjustment of BellSouth's VEIS rates is warranted.

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[45] See Table 3-A categories for Land and Buildings.

[46] The Land and Buildings cost factors related to VEIS floor space investment appear to be significantly higher, 0.02 and 0.97, respectively, in both the TRPs and in Exhibit 2. In addition, it is unclear which ACF is associated with Land and which is associated with Buildings since the reported charges are interchanged in the TRP and Exhibit 2.

[47] See Petition to Reject or Partially to Suspend Virtual Expanded Interconnection Service Tariffs of Time Warner Communication Holdings, Inc. at 31-32, filed October 14, 1994.

Cincinnati Bell

As noted above, Cincinnati Bell has provided only partial data in its "public version" response to Question 17b.[48] The data relative to ACFs is of particularly limited usefulness. Specifically, Cincinnati Bell has not explicitly stated that the ACFs it provided were actually used in the calculations of expenses shown in the workpapers. Although, Cincinnati Bell has supplied account-specific ACFs in Exhibit A, they do not appear to match the account-specific expense values provided in conjunction with unit investments. For example, Cincinnati Bell's DS1 Service workpapers contain sixteen expense values for Accounts 6532-6728, whereas none of these accounts appear on the ACF workpapers.[49] The same problems recur in the DS3 workpapers.[50] Furthermore, since the investment values provided in the public version of Exhibit A include channel mileage related facilities, the associated expense values and ACFs may vary from those reported in the "confidential" version that TWComm has not been able to review.

Another impediment to comparing Cincinnati Bell's ACFs is that the company applied substantially lower ACFs to its longer-

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[48] Cincinnati Bell Direct Case, Exhibit A (Public Version).

[49] Compare id. at Exhibit A, "DS1 Service" sheet 1, Lines 35-50 with "Annual Charge Factors," sheets 1-2.

[50] Compare id. at Exhibit A, "DS3 Service" sheet 1, Lines 35-50 with "Annual Charge Factors," sheets 1-2.

term offerings for comparable DS1/DS3 services.[51] For example, the reported total for capital costs declines from $109.86 to $41.40 for "Other Circuit Equipment" moving from a one-year to a three-year contract term, which is a 62% reduction.[52] The same factor drops an additional 34% to $27.38, under the five-year contract term option.[53] While it is fair to expect some cost savings from securing customers in longer-term contracts, these claimed expense reductions appear unreasonable.

By understating the direct costs of its contract offerings, Cincinnati Bell exaggerates the apparent overhead loadings applied to these services, creating a misleading comparison for the overheads applied to the company's virtual collocation services. The Bureau should require Cincinnati Bell to explain and justify the ACFs and expense levels reported for its contract DS1/DS3 services, and ensure that the rates for virtual collocation services are adjusted to be commensurate with reasonable estimates of the share of overhead costs recovered by the contract services.

GTE

The data provided by GTE reveals a pattern of unreasonably high maintenance ACFs applied to the company's virtual collocation services when compared to DS1/DS3 services, for which

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[51] See id. at Appendix A, page 1 and "Annual Charge Factors" workpapers.

[52] Id. at "Annual Charge Factors" workpapers 3 and 4.

[53] Id. at "Annual Charge Factors" workpapers 4 and 5.

it has failed to provide any explanation.[54] As shown in Table 4, virtually all of the GTOC and GTSC study areas exhibit maintenance ACFs that were substantially higher for VEIS than for the comparable DS1/DS3 services. These unreasonably high ACFs were applied to nearly all virtual collocation elements including Cross-Connects, Power Equipment, and Maintenance Fee-Alarm Network.[55]

For the GTOC study areas, the average discrepancy over all areas exceeds 50%, and there are many study areas in which the ACF applied to virtual collocation services are 70% higher or more.[56] In California, for example, GTE's maintenance ACF of 8.35% applied to virtual collocation elements is 71% higher than the ACF of 4.88% applied to comparable DS1/DS3 services.[57] With the exception of Washington (a Contel company) and California, the maintenance ACFs applied to generate the direct costs for VEIS elements are substantially higher. The GTSC study areas show an average disparity of 18%, with two areas exceeding 40%.[58] The disparities in the Maintenance ACF are particularly

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[54] See Designation Order at ¶ 17(d) ("If the same factors were not used, LECs must explain the basis for the differences.")

[55] The exception was Floor Space associated with the power element.

[56] See Table 4.

[57] Compare GTE Direct Case at Attachment 1, Workpaper "California" p. 3 with Attachment GTCA-DS1. The effective ACF appears to vary slightly for different SAL components. Perhaps the single set of ACFs shown is a derived average, but that has not been made clear.

[58] Id.